

REMARKS

Claims 34 through 44 are pending in the application. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

FINALITY OF THE OFFICE ACTION

Claim 43 was rejected in the Final Office Action as being obvious over Ueda in view of Conlan. However, the Applicant respectfully submits that the Final Office Action is premature, because it does not state sufficient reasons for the rejection of dependent claim 43. In making a final rejection, the Examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, clearly stating the reasons in support thereof. MPEP 706.07. Applicant accordingly requests that the finality of the Office Action be withdrawn, and the subject matter of claim 43 (presently amended into claim 39) be discussed in a later office action.

Specifically, the Final Office Action alleges on page 5 that Conlan teaches the tip of the catheter as having an ablation instrument that is supplied with energy via an optical fiber (column 10, lines 25-31). However, Conlan only teaches a light pipe or optical fiber to conduct light to an emitting beacon, and then positioning the device in a passage by such illumination. Conlan may teach positioning the tip of an ablation catheter by such illumination, but the Final Office Action fails to particularly point out the specific teaching of an optical conduit that conducts ablating energy to the distal end. Even assuming, arguendo, that Conlan teaches an ablation catheter that would inherently receive ablating energy (eg. - RF or electrical energy), there is no specific disclosure that an optical fiber is supplied with ablating energy from a laser energy source. As such, the Applicant submits the finality of the rejection of claim 43 is premature.

REJECTION UNDER 35 U.S.C. § 102

Claims 34-37 and 39 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Ueda (U.S. Patent No. 5,681,260). This rejection is respectfully traversed.

Claim 39

At the outset, the Applicant submits that the amendment to claim 39 to include the features in claim 43 has rendered the above rejection moot. Claim 39 clarifies that atherectomy device comprises two optical conduits, at least one optical conduit that is connected to an optical imaging system for acquiring an image of the interior circumference of a vessel in which the device is located, and at least one optical conduit that is connected to a remote optical laser energy source for conducting ablating laser energy to the distal end of the device. Paragraph 88 of the present application discloses "a first lumen 814 opening at the distal end, for receiving an optical fiber 816 for conducting ablating laser energy to the distal end of the tool to ablate atheromatous material distal to the tool. The tool 810 also includes a passage 818." Paragraphs 13 and 49 further clarify that "open" lumens of the device can be used with optical coherence tomographic, or laser based imaging systems, or that lumens can be used with an optical fiber to perform laser induced fluorescence spectroscopy or optical low coherence reflectometry or optical coherence tomography.

The Applicant submits that neither Ueda, or Conlan, disclose two such optical conduits, where at least one optical conduit that is connected to an optical imaging system for acquiring an image of the interior circumference of a vessel in which the device is located, and at least one optical conduit is connected to a remote optical laser energy source for conducting ablating laser energy to the distal end of the device. As such, the Applicant submits that claim 39 is distinguished over the cited references.

With regard to claims 40-42 and 44, these claims ultimately depend from claim 39, which the Applicant considers to be allowable in view of the above remarks. As such, the Applicant submits that claims are also allowable for at least these reasons.

Claims 1-38 and 43 have been cancelled without prejudice, to place the application in a condition for allowance.

DOUBLE PATENTING REJECTION

Claims 39, 40-42 are rejected under the non-statutory double patenting doctrine over claims 1-26 of US Patent 5,681,260. This rejection is respectfully traversed.

With regard to the double patenting rejection of claims 39-42, the Applicants submits that the Ueda patent, in view of Conlan or Goldenberg, fails to claim or disclose two optical conduits, where at least one optical conduit acquiring an image of the interior circumference of a vessel in which the device is located, and at least one optical conduit is connected to a remote optical laser energy source for conducting ablating laser energy to the distal end of the device. Goldenberg does not teach two optical conduits, where a first optical conduit is connected to an optical imaging system for acquiring an image of the interior circumference of a vessel in which the medical device is located, and a second optical conduit is connected to a remote optical laser energy source for conducting ablating laser energy to the distal end of the device. Thus, the Applicants submit claims 34-43 are patentably distinct from patent 5,681,260.

CONCLUSION

The Applicant submits that the amendments to claim 39 have overcome the present rejections, and have placed the application in a condition for allowance. Thus,

prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (314) 726-7500.

Respectfully submitted,

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